

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:18-cv-00140-FDW**

RONALD MCCLARY,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
FNU FOX,)	
FNU KALINSKI,)	
)	
Defendants.)	
)	

THIS MATTER is before the Court upon Plaintiff Ronald McClary's pro se civil rights Complaint, 42 U.S.C. § 1983 (Doc. No. 1) and application to proceed in forma pauperis (Doc. No. 2).

Plaintiff is a prisoner of the state of North Carolina, serving a life sentence for first-degree murder. He filed the instant Complaint on August 31, 2018, and names FNU Fox, identified as a nurse at Alexander Correctional Institution ("ACI"), and FNU Kalinski, identified as a doctor at ACI, as Defendants. Plaintiff alleges:

I got sick from Nutraloaf and never should have been approved by Fox and Kalinski I'm on special diet and cannot eat certain foods including the Nutraloaf. I put in sick calls and not seen in the three months at Alexander at all tho I put in many sick calls. I have high blood and my blood pressure was not monitored. It was a (denial) of medical care and my condition worsen. Spoke to Fox but (no) treatment. Grievance is lying no proof of any medical treatment the whole month of May not given Flomax medication for my enlarged prostate and bladder. No examination by Dr Kalinski in 3 months at Alexander. Nurse Fox knew of the K.O.P. med Flomax and did not get it for a month tho it was available. The medical records will show 100% this is true. Despite the various maladies and ailments deteriorated disk in lower back x-ray will show and GERD-H-pylori stomach problems known by Fox and Kalinski nothing was done at all. A fact all of these maladies exist and a fact not one thing no treatment at all despite filing many sick calls but never seen one time sick call. This is clear cut no medical treatment at all

(Compl. 3-4, Doc. No. 1) (spelling and punctuation errors in original). Plaintiff seeks compensatory and punitive damages.

Although he denies having begun any other lawsuit in state or federal court dealing with the same facts involved in this action (Compl. 1 ¶ 1A), Plaintiff filed a § 1983 Complaint against Defendants Fox and Kalinski on June 28, 2018, alleging deliberate indifference to his serious medical needs, see Compl., McClary v. Kalinski, et al., 5:18-cv-00102- FDW (W.D.N.C.), Doc. No. 1.¹ In that complaint, which is still pending before the Court, Plaintiff raises essentially the same claims against Defendants Kalinski and Fox, see id., as he does here. The only differences between the two Complaints is that the prior-in-time complaint has an additional defendant – FNU Lor, identified as a dietician at ACI – and the allegations cover only seven weeks, while the allegations in the instant Complaint cover the entire three months Plaintiff was at ACI.

Because the allegations in the instant Complaint either duplicate or expand the allegations against Fox and Kalinski in the previously-filed complaint, the Court will dismiss the instant Complaint without prejudice. Plaintiff may move to amend the complaint in the other pending action, No. 5:18-cv-00102-FDW, if he wishes to add claims or allegations against the defendants in that action.

IT IS, THEREFORE, ORDERED, that the application to proceed in forma pauperis (Doc. No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that the 42 U.S.C. § 1983 Complaint (Doc. No. 1) is **DISMISSED without prejudice** as duplicative of a previously-filed action that is pending

¹ Plaintiff also falsely denies having begun any other lawsuits in state or federal court relating to his imprisonment (Compl. 1 ¶ 1A). In fact, since 2014, Plaintiff has filed at least 35 lawsuits in the Eastern and Western Districts of North Carolina, relating to his imprisonment. More than half of those cases are still pending. See PACER Case Locater, <https://pcl.uscourts.gov/pcl/pages/search/findParty.jsf>. Search criteria: Party Search; Last Name: McClary; First Name: Ronald; Jurisdiction Type: Civil; Party Roles: [PLA] (last viewed 9/4/18).

before this Court.

SO ORDERED.

Signed: September 5, 2018



Frank D. Whitney
Chief United States District Judge

